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9 Henry Bouillercce
10

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 DALLAS WOLL,

15 Plaintiff,

16 v.

17 COUNTY OF LAKE, MARY JANE
18 FIGALDE, and HENRY BOUILLERCCE,

19 Defendants.
20

Case No. CV 07 6299 BZ

(Unlimited Civil Case)

Hon. Magistrate Bernard Zimmerman

**DEFENDANT HENRY BOUILLERCCE'S
ANSWER TO COMPLAINT; DEMAND
FOR TRIAL BY JURY**

21 _____/
22 Comes now Defendant Henry Bouillercce in response to plaintiff's complaint.

23 **GENERAL RESPONSE TO PARAGRAPHS**

24 **1 through 15, Inclusive**

25 **JURISDICTION**

26 1. Henry Bouillercce denies the applicability of Title 42 of the United States Code §1983
27 due to lack of information and knowledge sufficient to form a belief. Defendant admits that
28 defendants reside in this Judicial District.

PARTIES

2. Henry Bouillercce denies the allegations of paragraph 2 based upon a lack of information
and knowledge sufficient to form a belief.

3. Henry Bouillercce admits the allegations of paragraph 3.

1 4. Henry Bouillercce denies the allegation that Henry Bouillercce is an employee of the Lake
2 County Community Development and denies the remaining allegations of paragraph 4 for lack of
3 information and belief.

4 5. Henry Bouillercce denies, generally and specifically, the allegations of Paragraph 5 except
5 for the allegation that said parcel is located in an unincorporated area of the County of Lake, at 6585
6 Jacobsen Road, Kelseyville, California.

7 6. Henry Bouillercce admits that the Lake County Community Development Department
8 recorded a Notice of Nuisance on December 16, 2005 but denies, generally and specifically, the
9 remaining allegations of the first sentence of Paragraph 6. Henry Bouillercce denies, generally and
10 specifically, the remaining allegations of Paragraph 6 for lack of information and belief.

11 7. Henry Bouillercce denies, generally and specifically, the allegations of Paragraph 7.

12 8. Henry Bouillercce denies, generally and specifically, the allegations of Paragraph 8.

13 9. Henry Bouillercce denies, generally and specifically, the allegations of Paragraph 9.

14 10. Henry Bouillercce, generally and specifically, the allegations of Paragraph 10.

15 11. Henry Bouillercce denies, generally and specifically, the allegations of Paragraph 11.

16 12. Henry Bouillercce denies, generally and specifically, the allegations of Paragraph 12.

17 13. Henry Bouillercce denies, generally and specifically, the allegations of Paragraph 13.

18 14. Henry Bouillercce denies, generally and specifically, the allegations of Paragraph 14.

19 15. Henry Bouillercce denies, generally and specifically, the allegations of Paragraph 15.

20 **JURY TRIAL DEMANDED**

21 Henry Bouillercce likewise demands a trial by jury.

22 **AFFIRMATIVE DEFENSES**

23 AS AND FOR A SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to the
24 complaint, this answering defendant alleges that the complaint fails to state facts sufficient to
25 constitute a cause of action against any of said defendants.

26 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
27 the complaint, this answering defendant alleges that should plaintiff recover damages against her, this
28 answering defendant should be entitled to have the amount reduced or eliminated to the extent that

1 plaintiff's negligence and/or fault caused the damages herein.

2 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
3 the complaint, this answering defendant alleges that plaintiff assumed the risk of the matters referred
4 to in the complaint and that he knew and appreciated the nature of the risk, and that he voluntarily
5 accepted the risk.

6 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
7 the complaint, this answering defendant alleges that the sole and/or partial proximate cause of the
8 damages claimed was due to the negligence of co-defendants, and other persons, firms or entities not
9 specifically named in the complaint.

10 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
11 the complaint, this answering defendant alleges that in the event she is held liable to plaintiff, which
12 liability is expressly denied, and the co-defendants or other persons, firms or entities not specifically
13 named in the complaint, are likewise held liable, this defendant is entitled to percentage contribution
14 of the total liability from said co-defendant and/or unnamed parties in accordance with the principals
15 of equitable indemnity and comparative contribution.

16 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
17 the complaint herein, and each claim for relief thereof, this answering defendant alleges that at all
18 times mentioned in plaintiff's complaint, this defendant acted in good faith with the reasonable belief
19 as to the lawfulness of its actions.

20 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
21 the complaint, this answering defendant alleges that should plaintiff recover damages against
22 defendants, or any of them, this defendant should be entitled to have the amount reduced or
23 eliminated to the extent that plaintiff failed take reasonable steps to mitigate those damages.

24 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
25 the complaint herein, and each claim for relief thereof, this answering defendant alleges that at all
26 times mentioned in plaintiff's complaint, the actions of this defendant was privileged under the
27 surrounding circumstances.

28 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to

1 the complaint herein, and each claim for relief thereof, this answering defendant alleges that at all
2 times mentioned in plaintiff's complaint the actions of the defendants, and each of them, were based
3 exclusively upon bona fide law enforcement considerations with a reasonable belief that their actions
4 were lawful, and as such they are protected by the qualified immunity privilege.

5 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
6 the complaint herein, and each claim for relief thereof, this answering defendant alleges that plaintiff
7 failed to exhaust administrative remedies.

8 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
9 the complaint herein, and each claim for relief thereof, this answering defendant alleges that, to the
10 extent the allegations made against this answering defendant by plaintiff's attempt to enlarge upon the
11 facts, contentions, or theories set forth in his respective claims heretofore presented to defendant, said
12 complaint is in violation of Government Code Sections 900, et seq., and defendant expressly reserves
13 the right to move to strike any and all such allegations and to object to the admission of any evidence
14 directed to the proof thereof.

15 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
16 the complaint herein, this answering defendant alleges that she is immune from liability pursuant to
17 the provisions of Government Code §§815 through 856.6, inclusive, §§900 through 913.2, inclusive,
18 and §§950 through 951, inclusive.

19 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
20 the complaint herein, and each claim for relief thereof, this answering defendant alleges that plaintiff
21 had full knowledge of the risks involved in the illegal activity in which he was engaged; that plaintiff
22 voluntarily assumed all the risks incident to the activity engaged in at the time and place mentioned in
23 the complaint; and that the loss or damage, if any, sustained by plaintiff was caused by said risks
24 which were accepted and voluntarily assumed by plaintiff when he engaged in said activities.

25 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
26 the complaint herein, and each claim for relief thereof, this answering defendant alleges that any
27 injuries suffered by plaintiff were caused by supervening events over which this defendant had no
28 control.

1 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
 2 the complaint herein, and each claim for relief thereof, this answering defendant alleges that by way
 3 of a plea of comparative negligence, plaintiff was negligent in and about the matters and activities
 4 alleged; that said negligence contributed to and was a proximate cause of plaintiffs' alleged injuries
 5 and damages, if any, or was the sole cause thereof; and if plaintiff is entitled to recover damages
 6 against defendant by virtue of this complaint, defendant prays that the recovery be diminished or
 7 extinguished by reason of the negligence of the plaintiff in proportion to the degree of fault
 8 attributable to him.

9 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
 10 the complaint, this answering defendant alleges that, to the extent that plaintiff's civil rights were not
 11 violated, no cause of action for violation of plaintiff's civil rights will lie.

12 WHEREFORE, Henry Bouillercce prays as follows:

- 13 1. That plaintiff take nothing by reason of said complaint.
- 14 2. That this answering defendant be awarded reasonable attorney's fees, costs of suit and
 15 such other and further relief as the Court deems just.

16
 17 Dated: May 16, 2008

KELLY JACKSON & CHRISTIANSON, LLP

18
 19 By /s/

20 Clay J. Christianson
 21 Attorneys for Defendants County of Lake,
 Mary Jane Figalde and Henry Bouillercce

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DEMAND FOR TRIAL BY JURY

By way of endorsement hereon, Henry Bouillercce hereby demands a trial by jury.

/s/

Clay J. Christianson
Attorneys for Defendants
County of Lake, Mary Jane Figalde and Henry
Bouillercce

SIGNATURE ATTESTATION

I attest that I have on file all holograph signatures for any signatures indicated by a conformed signature (/s/) within this e-filed document.

/s/

Clay J. Christianson
Attorneys for Defendants
County of Lake, Mary Jane Figalde and Henry
Bouillercce

Case No. CV 07 6299 BZ

U.S. District Court - Northern District

PROOF OF SERVICE BY MAIL
[FRCivP 5(b)]

I am employed in the County of Sonoma, California. I am over the age of eighteen years and not a party to the within entitled cause; my business address is 90 South E Street, Suite 310, Santa Rosa, California 95404. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service, such correspondence would be deposited with the United States Postal Service that same day in the ordinary court of business.

On the date of execution of this declaration, I served the attached:

DEFENDANT HENRY BOUILLERCE'S ANSWER TO COMPLAINT

on the interested parties in said cause, addressed as follows:

Frear Stephen Schmid, Esq.
177 Post Street, Suite 890
San Francisco, CA 94108

Attorney for Plaintiff Dallas Woll
(415) 788-5957
(415) 788-5958 Fax

X (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid, on the date of execution of this declaration, with our office outgoing mail following ordinary business practices.

____ (BY PERSONAL SERVICE) I caused each such envelope to be delivered by hand to the addressee(s) noted above.

____ (BY FACSIMILE) I caused the said document to be transmitted by Facsimile machine to the number indicated above.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made, and that this declaration was executed on May 16, 2008, at Santa Rosa, California.

/s/

Linda Moldrem